

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DUSTIN MOSER, )  
                    )  
Plaintiff,       ) Civil Action No. 15-1516  
                    )  
v.                ) Judge Cathy Bissoon  
                    ) Magistrate Judge Cynthia Reed Eddy  
BYUNGHAK JIN, M.D., *et al.*, )  
                    )  
Defendants.      )

**MEMORANDUM AND ORDER**

This case was referred to United States Magistrate Cynthia Reed Eddy for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Local Rule of Civil Procedure 72.

On April 22, 2016, Defendants Robert D. Gilmore, Christopher H. Oppman, Irma Vihlida and John E. Wetzel (“the Corrections Defendants”) filed a Motion to Dismiss of Plaintiff’s Complaint. On June 17, 2016, Defendant Dr. Byunghak Jin filed a separate Motion to Dismiss Plaintiff’s Complaint. On October 27, 2016, the Magistrate Judge issued a Report (Doc. 42) recommending that the Corrections Defendants’ Motion to Dismiss be Granted in Part and Denied in Part and that Dr. Jin’s Motion to Dismiss be Denied. Service of the Report and Recommendation was made.

On December 1, 2016, Defendant Jin filed objections to the Report and Recommendation. No response to Defendant Jin’s objections has been filed. .

After a *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation and the Objections thereto, the following Order is entered:

Defendants Robert D. Gilmore, Christopher H. Oppman, Irma Vihlida and John E. Wetzel's Motion to Dismiss Plaintiff's Complaint (**Doc. 18**) is **GRANTED IN PART AND DENIED IN PART**. Specifically, the Corrections Defendants' Motion to Dismiss is GRANTED on the ground that Plaintiff has failed to allege sufficient personal involvement on the part of Defendants Wetzel and Oppman, and the Complaint in its entirety hereby is DISMISSED WITH PREJUDICE against Defendants Wetzel and Oppman<sup>1</sup>. IT IS FURTHER ORDERED that the Corrections Defendants' Motion to Dismiss is DENIED as to Defendants Gilmore and Vihlidal. IT IS FURTHER ORDERED that Defendant Jin's Motion to Dismiss (**Doc. 29**) is **DENIED**. The Magistrate Judge's Report and Recommendation (Doc. 42), dated October 27, 2016, hereby is adopted as the Opinion of the District Court.

IT IS SO ORDERED.

December 29, 2016

s/Cathy Bissoon

Cathy Bissoon  
United States District Judge

cc (via ECF email notification):

All counsel of record

cc (via First-Class U.S. Mail):

DUSTIN MOSER  
GJ-3837  
S.C.I. Greene  
175 Progress Drive  
Waynesburg, PA 15370

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<sup>1</sup> The Court will dismiss the Complaint with prejudice as to Defendants Wetzel and Oppman as an amendment would be futile. See Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004) (holding that district courts must permit a curative amendment within a set period of time unless such an amendment would be inequitable or futile).